IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2420 OF 2006

Smt.Fatimabail Wd/o Suleman Lokhandwala ...Appellant
vs.
Maharashtra Housing Area
Development Authority ...Respondent

Mr.K.D.Jha for the Appellant
Mr.A.R.Patil,A.G.P. for the Respondent.

CORAM: A.S.OKA,J.
DATE : JANUARY 10,2007.

P.C.:

1. Heard Advocate for the Appellant-Plaintiff. The Appellant is the original Plaintiff. True copies of the plaint, notes of evidence and all the documents relied upon by the Appellant are on the record of the First Appeal. A suit filed by the Appellant-Plaintiff has been dismissed by the impugned Judgment and Decree.

2. The case of the Appellant-Plaintiff is that she was occupying room No.5 on the first floor of Sajitha Manzil, 54, Zakaria Masjid Street, Mumbai 400 009 as the tenant thereof. As the said building was in dilapidated condition, the Respondent issued a notice under section 90 of Maharashtra Housing Area Development Act, 1976. On the basis of the said notice of vacation, the Appellant-Plaintiff vacated the said room No.5 and occupied the transit accommodation which the subject matter of the present suit. According to the case of the Appellant-Plaintiff, the original room is not ready for occupation and the still the Respondent was threatening to

evict her from the transit accommodation. Therefore, a suit for declaration and injunction was filed for protecting the possession of the Appellant-Plaintiff over the transit accommodation. Written statement was not filed by the Respondent. However, the Trial Court permitted the Appellant to lead the evidence and accordingly one Shri Mohamed Shaikh, the constituted attorney of the Appellant-Plaintiff filed an Affidavit of evidence who was extensively cross examined by the Advocate for the Respondent. The trial court dismissed the suit on merits. One of the grounds on which the suit was dismissed is that the original premises are already occupied by the Appellant's uncle.

3. The entire suit proceeds on the footing that the Appellant-Plaintiff is the tenant in respect of the original accommodation viz. room no.5 and she has a right to occupy the said room after work of repairs is completed.

4. The Constituted Attorney of the Appellant in paragraph 7 of the Affidavit of examination-in-chief stated thus :

"7. I say that the original tenant by executing the necessary documents relinquishing all her right, title and interest in my favour and I am waiting for the completion of repairs of the old tenement and also to get allotment of my reconstructed permanent accommodation till date. I produce the Affidavit and indemnity Bond both dated 27-11-1996, the same

may be taken on record and marked as Ex "G".

In the cross examination, the constituted Attorney of the Appellant stated that the Appellant is his mother's sister and the Appellant was residing with him in the suit premises. In the cross examination, the constituted attorney of the Appellant admitted thus :

"....The old premises given by way of gift by the Plaintiff. It was a gift on 27-11-1996. there was no any document of gift executed by the Plaintiff in my favour. Since 1996 and after gift in my favour Plaintiff is residing with me..."

Thus, the case made out by the Constituted Attorney of the Appellant-Plaintiff in his evidence is that the Plaintiff had made a gift on 27th November 1996 in respect of the said room No.5 in favour of the said constituted attorney. In view of the said case made out by the constituted attorney of the Plaintiff, it is obvious that on the date of institution of the suit the Plaintiff herself had no subsisting right, title or interest in respect of the room no.5. The Plaintiff claimed injunction in respect of the transit accommodation only on the ground that she has a right to re occupy the room no.5. Once the Appellant-Plaintiff had on her own made a gift, surely she cannot claim right,title or interest in respect of the transit accommodation which is suit property subject matter of the suit. In this view of the matter there

is no merit in the Appeal and the same is dismissed with no order as to costs.

JUDGE